SENATE BILL NO. 134

INTRODUCED BY K. MILLER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT COAL PRODUCED FOR IN-STATE ELECTRICAL GENERATING FACILITIES THAT OFFER ELECTRICAL POWER AT A SPECIFIC PRICE FOR IN-STATE USE AND THAT ARE CONSTRUCTED AFTER DECEMBER 31, 2001, IS TAXED AT ONE-THIRD THE OTHERWISE APPLICABLE COAL SEVERANCE TAX RATE; AMENDING SECTIONS 15-35-101 AND 15-35-103, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-35-101, MCA, is amended to read:

"15-35-101. Legislative findings and declarations of purpose. (1) The legislature finds that ~~while~~ although coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals ~~such~~ so that they should be classified in different categories for taxation purposes. The legislature finds that ~~while~~ although coal can be ~~utilized~~ used like petroleum products, there are differences between coal and petroleum ~~such~~ so that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral ~~which~~ that can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral ~~which~~ that is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development ~~which~~ that could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) subbituminous coal and lignite coal in Montana have sufficiently different markets and value and therefore require different production taxes;

(f) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay; ~~and~~

(g) coal production in Montana has been subject to an uncoordinated array of taxes ~~which~~ that overlap one another and yield revenue in an inconsistent and unpredictable manner; and

(h) coal used for the production of electricity near the coal mine by modern generating plants has significant statewide and nationwide economic, transportation, and environmental advantages that allow different production taxes.

(2) The legislature declares that the purposes of this chapter are to:

(a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; ~~and~~

(d) recognize the economic, transportation, and environmental advantages of electrical generation by modern electrical generation plants near coal mines; and

~~(d)~~(e) accomplish the ~~foregoing~~ purposes of this subsection (2) by establishing categories of taxation ~~which~~ that recognize the unique character of coal, as well as the variations found within the coal industry, and by encouraging the use of coal to produce electricity in modern generating plants near the coal mine."

Section 2. Section 15-35-103, MCA, is amended to read:

"15-35-103. (Temporary) Severance tax -- rates imposed. (1) (a) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(b) The rate of taxation for coal ~~used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001,~~ THAT MEETS THE FOLLOWING CONDITIONS is one-third the applicable rate set forth in subsection (1)(a), ROUNDED TO THE NEAREST 10TH OF A PERCENT:

(I) THE COAL IS USED FOR THE PRODUCTION OF ELECTRICITY WITHIN THE STATE IN AN ELECTRICAL GENERATION FACILITY THAT WAS CONSTRUCTED AFTER DECEMBER 31, 2001, AND BEFORE JANUARY 1, 2008.

(II) THE ELECTRICAL PRODUCER AGREES TO OFFER, FOR USE WITHIN THE STATE, THE FIRST ONE-HALF OF THE AMOUNT OF POWER THAT IT PRODUCES TO MONTANA CUSTOMERS AND DISTRIBUTION SERVICES PROVIDERS AT A COST TO BE SET BY THE PUBLIC SERVICE COMMISSION THAT REFLECTS THE PRODUCER'S COST OF GENERATING THE ELECTRICITY PLUS A REASONABLE RETURN ON INVESTMENT.

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) In addition to the exemption described in subsection (4), a person is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons. (Terminates December 31, 2005--sec. 5, Ch. 318, L. 1995.)

15-35-103. (Effective January 1, 2006) Severance tax -- rates imposed. (1) (a) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(b) The rate of taxation for coal ~~used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001,~~ THAT MEETS THE FOLLOWING CONDITIONS is one-third the applicable rate set forth in subsection (1)(a), ROUNDED TO THE NEAREST 10TH OF A PERCENT:

(I) THE COAL IS USED FOR THE PRODUCTION OF ELECTRICITY WITHIN THE STATE IN AN ELECTRICAL GENERATION FACILITY THAT WAS CONSTRUCTED AFTER DECEMBER 31, 2001, AND BEFORE JANUARY 1, 2008.

(II) THE ELECTRICAL PRODUCER AGREES TO OFFER, FOR USE WITHIN THE STATE, THE FIRST ONE-HALF OF THE AMOUNT OF POWER THAT IT PRODUCES TO MONTANA CUSTOMERS AND DISTRIBUTION SERVICES PROVIDERS AT A COST TO BE SET BY THE PUBLIC SERVICE COMMISSION THAT REFLECTS THE PRODUCER'S COST OF GENERATING THE ELECTRICITY PLUS A REASONABLE RETURN ON INVESTMENT.

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons."

NEW SECTION. **Section 3. Effective date.** [This act] is effective January 1, 2002.

NEW SECTION. **Section 4. Applicability.** [This act] applies to coal produced after December 31, 2001.

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